

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUB-ZERO, INC.,

Plaintiff,

v.

VARIANT, INC.,

Defendant.

ORDER

08-cv-725-bbc

Plaintiff Sub-Zero, Inc. brought this action against defendant Variant, Inc. on December 15, 2008, seeking a declaratory judgment that it does not infringe defendant's license to U.S. Patent No. 7,379,900 or that the '900 patent is invalid. Now defendant has moved under 28 U.S.C. § 1404(a) to either stay the case or transfer it to the Eastern District of Texas, where another case involving the same patent is pending, Variant, Inc. v. Flexsol Packaging Corp. no. 6:08-cv-478-led. The Texas case was filed on December 11, 2008 against plaintiff and twelve other defendants. Earlier, on July 15, 2008, defendant had filed a patent infringement action against plaintiff on the '900 patent in this court; on September 26, 2008, it dismissed the suit without prejudice.

Although defendant deserves no kudos for its misuse of judicial resources, denying its

motion would not ameliorate the situation. Staying the suit would not spare plaintiff from having to litigate in Texas and it would make no sense to try any aspect of the case here while the Texas litigation is proceeding. Plaintiff has shown no reason why transfer would be improper. It does not suggest that it is not subject to jurisdiction in the Eastern District of Texas or that any witnesses it wishes to call would not be amenable to process in Texas. It says only that it would be easier for its witnesses if the case were tried here where its headquarters are. Documents may be transferred electronically or by mail; those few lay witnesses required for a patent trial are generally employees, who do not need subpoenas in order to appear.

The speed to trial might be slightly greater here than in Texas, but that consideration does not outweigh the judicial efficiency of trying all the claims in one lawsuit.

ORDER

IT IS ORDERED that defendant Variant, Inc.'s motion to transfer venue of this case to the Eastern District of Texas is GRANTED.

Entered this 18th day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge